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Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixty-seventh year

Letter dated 6 December 2012 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General

I have the honour to forward, enclosed herewith, the information on the Republic of Serbia's cooperation with the International Criminal Tribunal for the Former Yugoslavia (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda item 73, and of the Security Council.

(*Signed*) Feodor **Starčević**

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Annex to the letter dated 6 December 2012 from the Permanent Representative of Serbia to the United Nations addressed to the Secretary-General

National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia, Republic of Serbia

Information on the Cooperation of the Republic of Serbia with the International Criminal Tribunal for the Former Yugoslavia

Summary

- With the arrest of the accused Goran Hadzić on 22 July 2011, the Republic of Serbia completed its cooperation with the Tribunal in the part regarding the transfer of the accused. The Republic of Serbia transferred to the Tribunal 45 of the 46 indictees accused of war crimes, while one person committed suicide prior to his transfer. Among the accused transferred to the Tribunal are two former Presidents of the Republic, former Prime Minister and former Vice Prime Minister, three former Chiefs of Staff of the Army, a former Chief of the State Security Service and numerous military and police generals.
- The Republic of Serbia has replied to nearly all of the 2,115 requests for assistance received from the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia.
- Of the legal defence teams' 1,212 requests for assistance, received between the end of 2004 and present, the Republic of Serbia replied to nearly all.
- Not one of the requests for assistance from the Office of the Prosecutor or the legal defence teams for accessing the State archives has been denied.
- All witnesses requested to give testimony before the Tribunal by the Office of the Prosecutor and legal defence teams have been given waivers.
- All of the Tribunal's summonses and other documents in writing have been distributed to the individuals residing on the territory of the Republic of Serbia.
- All of the Tribunal's requests for witness protection have been realized in cases when witnesses were residing on the territory of the Republic of Serbia's jurisdiction.
- Conditions set out for the accused on provisional release have been respected impeccably and at all times and the accused have been transferred to the Tribunal in accord with the decisions of the Trial Chambers.
- According to the Republic of Serbia Office of the War Crimes Prosecutor, altogether 395 individuals suspected of criminal offences against international humanitarian law have been prosecuted before the national judicial institutions in charge.

- **The International Criminal Tribunal for the Former Yugoslavia Appeals Chamber's judgment of acquittal of Ante Gotovina and Mladen Markac of 16 November 2012, which released Gotovina and Markac from responsibility in relation to the crimes perpetuated against the Serbian civilian population by the Croatian forces in operation *Oluja*, as well as the Trial Chamber's judgment of acquittal of 29 November 2012 following the retrial of the accused Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, resulted in the resentment of the Republic of Serbia and motivated the decision of the Government of the Republic of Serbia to reduce future cooperation with the Tribunal to the technical level.**

I. Introduction

1. In order to fulfil its international obligations and establish full cooperation with the International Criminal Tribunal for the Former Yugoslavia, the Republic of Serbia adopted a set of regulations, established new governmental agencies and complemented the already existing governmental bodies with new departments and units.

2. Cooperation between the Republic of Serbia and the Tribunal has included, since the very beginning of the cooperation process and in addition to the surrender of the accused, manifold other aspects, such as production of the documents for the needs of the proceedings; waivers for the witnesses in order for the witnesses to give statements before the Tribunal; delivery of summonses and other written documents to individuals residing on the territory of the Republic of Serbia; protection of witnesses and their families; supervision of the accused who are granted provisional release and who during that time reside on the territory of the Republic of Serbia; correspondence and direct contacts with the Office of the Prosecutor, the Registry, the President and Trial Chambers of the Tribunal, including all technical assistance, as well as direct cooperation between the Republic of Serbia Office of the War Crimes Prosecutor and the Office of the Prosecutor of the Tribunal through the exchange of data from the electronic databases of the two Offices.

II. Arrests and surrenders of the accused

A. Arrests and surrenders of the accused and voluntary surrenders

3. Fourteen of the indictees were arrested in the Republic of Serbia: Slobodan Milošević, Jovica Stanišić, Franko Simatović, Veselin Šljivancanin, Milomir Stakić, Predrag Banović, Nenad Banović, Vladimir Kovačević, Ranko Ćešić, Dražen Eredmović, Radovan Karadzić, Stojan Župljanin, Ratko Mladić and Goran Hadzić.

4. In the course of cooperation between the national and foreign security services, Milan Lukić was arrested in Argentina, Dragan Zelenović in the Russian Federation, Zdravko Tolimir in Bosnia and Herzegovina and Vlastimir Djordjević in Montenegro.

5. One of the accused (Vlajko Stojiljković) committed suicide in Belgrade.

6. Twenty-seven of the Tribunal indictees surrendered voluntarily: Milan Milutinović, Dragoljub Ojdanić, Nikola Šainović, Vojislav Šešelj, Mile Mrkšić, Gojko Janković, Milan Gvero, Radivoje Miletić, Momčilo Perišić, Pavle Strugar, Miodrag Jokić, Milan Martić, Miroslav Radić, Blagoje Simić, Željko Mejakić, Momčilo Gruban, Mitar Rašević, Ljubiša Beara, Dragomir Milošević, Mićo Stanišić, Vladimir Lazarević, Ljubomir Borovčanin, Drago Nikolić, Vinko Pandurević, Vujadin Popović, Nebojša Pavković and Sreten Lukić.

7. All of the citizens of the Republic of Serbia indicted before the Tribunal who surrendered voluntarily to the Tribunal were granted guarantees from the Government of the Republic of Serbia for the purposes of pretrial and provisional releases. The assumed responsibilities of the Government in relation to the guarantees given have been impeccably respected at all times and the accused have

been, without exception, transferred to the Tribunal in accordance with the time frames postulated by the Tribunal's Trial Chambers.

8. It is important to state that the Republic of Serbia transferred 45 out of 46 indictees to the Tribunal, including high-ranked representatives and officials like the President of the Federal Republic of Yugoslavia, the President of the Republic of Serbia, the Vice-President of the Federal Government, the Vice-President of the Government of the Republic of Serbia, three former Chiefs of Staff of the Yugoslav Army, the Chief of the State Security Service, as well as numerous army and police generals. One of the accused committed suicide before he could be transferred to the Tribunal.

B. Latest arrests

9. With the arrests of Ratko Mladić and Goran Hadzić in the Republic of Serbia on 26 May 2011 and 20 July 2011 and their transfer to the Tribunal in The Hague, the Republic of Serbia completed its cooperation with the Tribunal in respect of the transfer of the accused.

III. Cooperation regarding production of documents, access to the archives, witnesses and intelligence activities

A. Production of documents to the Tribunal

10. Since the establishment of the cooperation process between the Republic of Serbia and the Tribunal, the Republic of Serbia has received 2,115 requests for assistance from the Office of the Prosecutor of the Tribunal. The subjects of the aforementioned requests have been production of documents needed for the Office's preparation of proceedings before the Tribunal, visits to the State archives of the Republic of Serbia and waivers of the Office's witnesses.

11. Most of the requests received by the Republic of Serbia have been complied with in their entirety, while some requests of a later date are still being responded to. It should be emphasized that the aforesaid can be verified by the fact that during the meetings organized between the representatives of the National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia and the Office of the Prosecutor of the Tribunal in the period from 2009 to 2012 it was concluded that there were no outstanding requests for assistance, while the aforementioned was additionally confirmed in the regular reports of the Chief Prosecutor of the Tribunal to the Security Council of the United Nations in the last four years.

12. In regard to the total number of 1,212 requests for assistance received from the legal defence teams from the end of 2004 to the present, the Republic of Serbia has replied to almost all of the requests in their entirety, while the more recent requests are in the process of being responded to.

B. Access to the State archives of the Republic of Serbia

13. Representatives of the Office of the Prosecutor of the Tribunal have several times had access to the archives of the Ministry of Defence, the Cabinet of the President of the Republic of Serbia, the State Security Agency, the Ministry of the Interior and other State departments in charge. More precisely, representatives of the Office visited the State archives of the Republic of Serbia regarding 52 requests for assistance.

14. On the other hand, in the period from June 2007 to the present, representatives of the legal defence teams of the accused before the Tribunal have accessed the State archives of the Republic of Serbia regarding 36 requests for assistance.

15. It should be emphasized that not one request for assistance of the Office of the Prosecutor or the legal defence teams to access the Republic of Serbia State archives has been denied and that neither the Office of the Prosecutor nor the defence teams had unlimited access to the archives.

C. Witness waivers

16. In order for some individuals who came into possession of certain information and data representing State, official and/or military secrets to appear as witnesses before the Tribunal and testify in the particular proceedings, the Government of the Republic of Serbia has to decide on their waivers. Since the establishment of the National Council for Cooperation with the Tribunal to the present time, more than 750 witnesses have been given waivers in relation to State, official and military secrets, which enabled them to testify before the Tribunal. This number of witnesses encompasses the total number of individuals who gave their testimonies before the Tribunal in the capacities of witnesses of the prosecution, legal defence teams and the Trial Chambers. It is important to recognize that every individual requested by the Office of the Prosecutor or the legal defence teams, without exclusion, has been given a waiver and therefore was in a position to give his/her testimony before the Tribunal.

17. Taking into consideration all of the aforementioned, the Republic of Serbia considers that full cooperation regarding the requests for assistance of the Tribunal related to technical assistance has been achieved.

D. Intelligence activities

18. Activities of the Ministry of the Interior of the Republic of Serbia and activities of other security services participating in the cooperation with the Tribunal include, among others, the following.

19. **Searches for the individuals indicted before the Tribunal.** All of the accused have been transferred to the Tribunal.

20. **Realization of the requests for assistance related to identification, location, distribution of summonses and provisions of witnesses' presence in the Tribunal's proceedings.** In the period from June 2007 to 30 June 2012, the Ministry of the Interior acted upon eight Tribunal orders for contempt of the

Tribunal, 108 summonses and 36 subpoenas related to the ongoing proceedings before the Tribunal.

21. **Supervision and reporting about personal safety protection and protection of the Tribunal witnesses and their family members.** In the period from June 2007 to the present, following the requests of the Office of the Prosecutor and through cooperation with the Ministry of the Interior's Witness Protection Unit and other departments of the Ministry, protection was provided to 10 of the Tribunal's witnesses and members of their families.[1] All cases of witness protection were carried out without difficulty. In the period from 1 June 2011 to 7 June 2012, four witnesses and members of their families have been under supervision of the Witness Protection Unit.

22. **Transfer and supervision of the individuals granted provisional release; reporting about the implementation of the provisional release conditions.** In the period from June 2007 to the present, the Witness Protection Unit of the Ministry of the Interior has acted upon the decisions of the Tribunal's Trial Chambers regarding the transfer and supervision of indictees on provisional release. From August 2011 to 30 June 2012, the Unit supervised four indictees on provisional release.

IV. War crimes trial before the national jurisdiction, residual functions of the Tribunal and other activities

A. War crimes trials before the national jurisdiction

23. The completion strategy of the Tribunal is based on Security Council resolutions 1503 (2003) and 1534 (2004) and resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals. The main condition for the completion strategy to be feasible is the existence of national judiciaries capable of conducting criminal cases of violations of international law and crimes against humanity according to international legal standards. This was the reason why on 1 July 2003 the National Assembly of the Republic of Serbia adopted the Law on Organization and Competence of State Bodies in War Crimes Proceedings. According to this law, the War Crimes Chamber of the Belgrade District Court (from 1 January 2010: War Crimes Department of the Higher Court in Belgrade), the Office of the War Crimes Prosecutor of the Republic of Serbia and the War Crimes Investigation Service within the Ministry of the Interior were established, together with the War Crimes Panel of the Supreme Court of Serbia (from 1 January 2010: War Crimes Department of the Appellate Court in Belgrade), which is responsible for war crimes cases in second instance. In addition to the aforementioned, the National Assembly of the Republic of Serbia adopted on

[1] Witness protection was granted in all cases when requested by the Tribunal, except in one case in connection with *Prosecutor v. Ramush Haradinaj et al*. In this particular request for assistance, the Office of the Prosecutor requested witness protection for an individual who was still an active member of the Republic of Serbia's Ministry of the Interior. After consultations with this witness and an evaluation of his personal security, it was concluded that witness protection in this particular case was not necessary, which was the opinion of the witness as well. The Tribunal was informed in due time about the events described. In conclusion, the Republic of Serbia responded to every request for assistance regarding protection of witnesses in the Tribunal's proceedings.

5 November 2007 the Amendments to the Law on Organization and Competence of State Bodies in War Crimes Proceedings. According to this law, jurisdiction in cases against persons indicted for aiding the indictees of the International Criminal Tribunal for the Former Yugoslavia is transferred to the specialized institutions for investigation of war crimes (the War Crimes Investigation Service of the Ministry of the Interior, the Office of the War Crimes Prosecutor of the Republic of Serbia and the War Crimes Department of the Higher Court in Belgrade).

24. Since the adoption of the Law on Organization and Competence of State Bodies in War Crimes Proceedings, 395 individuals suspected of involvement in war crimes on the territory of the former Yugoslavia have been processed.[2] These proceedings are in different phases, from those in the investigation stage to those finalized in the second instance. The best known cases from this group are the following: "Osvetnici", "Štrpci", "Ovčara", "Zvornik", "Škorpioni", "Suva Reka" (the "Batajnica" case), "Podujevo", "the Bytyqi Brothers", "Anton Lekaj", "Ilija Jurišić" and "Lovas". Both the War Crimes Department of the Higher Court in Belgrade and the Office of the War Crimes Prosecutor of the Republic of Serbia have shown a high level of professionalism and technical capability for processing the aforementioned cases in accordance with international legal standards. The aforesaid is verified by the Tribunal's referral of some cases to national jurisdiction while the cases were in the investigative phase. The best known of these cases are *Zvornik*, *Skoripioni* and *Ovacara*. In addition, according to rule 11 bis of the Rules of Procedure and Evidence, which allows referral of the case in which an indictment has been confirmed to another court, the International Criminal Tribunal for the Former Yugoslavia referred to the Republic of Serbia the case against the accused Vladimir Kovačević Rambo. At the end, it should be emphasized that the Office of the Prosecutor of the Tribunal signed a memorandum of understanding with the Office of the War Crimes Prosecutor of the Republic of Serbia regarding access to the archives of the Office of the Prosecutor of the Tribunal.

25. In regard to regional cooperation, it is significant that the Office of the War Crimes Prosecutor of Serbia maintains regular contacts and strengthens cooperation with the prosecutors' offices of Montenegro, Croatia and Bosnia and Herzegovina. The Office of the War Crimes Prosecutor of Serbia formally established means of cooperation through memorandums of understanding. Cooperation among the regional prosecutions, including the exchange of evidence, documents and data, reflects the common interest of Serbia, Croatia, Bosnia and Herzegovina and Montenegro in conducting more thorough proceedings before national jurisdictions for criminal offences against humanity and violations of international humanitarian law.

[2] According to the data presented by the Republic of Serbia Office of the War Crimes Prosecutor, 152 individuals have been indicted before the juridical departments of the Republic of Serbia. Twenty-nine proceedings against 72 individuals have been concluded, in which 61 individuals were convicted and 11 acquitted. At the present there are eight ongoing proceedings against 46 individuals before the Court of Appeal in Belgrade and eight proceedings against 29 individuals before the War Crimes Chamber of the Higher Court in Belgrade. In addition, 25 cases against 76 individuals are in the investigative phase, while total number of the victims in the ongoing proceedings is 2,878.

B. Residual functions of the Tribunal

26. The completion strategy of the International Criminal Tribunal for the Former Yugoslavia was determined by Security Council resolutions 1503 (2003) and 1534 (2004), which envisaged the completion of all trial activities at first instance by the end of 2008, and all appeals by 2010. Following the idea of the completion strategy, the Tribunal identified 12 basic functions that should be considered with great care within the residual mechanism that would follow the completion of its activities. The issue of the Tribunal's archives is described as one of the most important functions. Authorities of the Republic of Serbia have been actively participating in the dialogue related to the residual functions, particularly as it relates to the Tribunal's archives.

27. The Government of the Republic of Serbia adopted on 23 October 2008 the official position in relation to the Tribunal's archives. This position was transmitted to the Tribunal and the Security Council.

28. The Government of the Republic of Serbia adopted on 13 March 2009 the official position in relation to the issues related to the residual mechanism and completion strategy of the Tribunal. This position was transmitted to the Security Council.

29. On 22 December 2010, the Security Council adopted resolution 1966 (2010), by which it established the International Residual Mechanism for Criminal Tribunals. This resolution envisages that the Residual Mechanism has two branches, one for the International Criminal Tribunal for the Former Yugoslavia and one for the International Criminal Tribunal for Rwanda. The starting date of the Residual Mechanism branch for the International Criminal Tribunal for the Former Yugoslavia is 1 July 2013, while both Tribunals are expected to undertake all possible efforts to finish their activities by 31 December 2014. The Republic of Serbia will continue to actively participate in this matter.

C. Initiative that citizens of the Republic of Serbia, convicted before the Tribunal, be referred to Serbia to serve their prison sentences

30. States established on the territory of the former Yugoslavia do not have the possibility to sign an agreement on enforcement of sentences with the Tribunal, which is a consequence of the recommendation of the Secretary-General of the United Nations from May 1993. In his report to the Security Council dated 3 May 1993, the Secretary-General emphasized that "given the nature of crimes in question and the international character of the tribunal, the enforcement of sentences should take place outside the territory of the former Yugoslavia" (S/25704, para. 121). Although this opinion could have been justified in 1993, in the period of wars on the territory of the former Yugoslavia, it is clear that the strength of this statement is not the same as in 1993 since the circumstances have changed. The Republic of Serbia has been pressing since 2009 for approval to sign an agreement on enforcement of prison sentences with the Tribunal. This type of agreement has been signed by 17 European States. The necessary precondition for this initiative to be realized is that the Secretary-General formally provide a new opinion to the Security Council in regard to this issue.

31. In this regard, the President of the National Council for Cooperation with the International Criminal Tribunal has addressed, on several occasions, officials of the United Nations and the Tribunal; however, these attempts did not lead to any significant response. The most important reason for this state of affairs is the fact that a positive recommendation of the Tribunal in regard to this issue is necessary, which has still not been provided. However, the officials of the Tribunal have not provided their support to this initiative so far in fear that the convicts would have privileged treatment in the States of the former Yugoslavia.

32. The primary motive of this initiative is the determination of the Republic of Serbia to assume responsibility for enforcement of prison sentences of Serbian citizens convicted before the Tribunal. In addition, it should be emphasized that the purpose of the punishment, among others, includes the re-socialization of the convicts. In this connection, we consider it unlikely that the punishment will achieve its purpose if convicts serve their sentences in remote countries, without knowing the language and where the possibility of visits of family members and contacts with families are reduced to a minimum. As an example, we would like to present the fact that two citizens of the Republic of Serbia, Milan Martic and Dragomir Milosevic, are in prisons of Estonia, where they have been transferred for enforcement of their prison sentences.

33. The Republic of Serbia would like to reiterate its readiness to accept its citizens convicted before the International Criminal Tribunal for the Former Yugoslavia for the enforcement of sentences, as well as other persons convicted before the Tribunal who are willing to serve their prison sentences in Serbia, as well as to present its guarantees that it will provide full security of the locations where the sentences will be enforced. Having this in mind, we would like to stress that the Republic of Serbia is willing to accept international monitoring in regard to the enforcement of the prison sentences of the convicts in question, which would be precisely defined during the future negotiations on this subject. In addition, Serbia would like to stress its readiness to offer firm guarantees that the convicted individuals will not be granted potential early provisional release or parole without the relevant decisions either of the Tribunal or the International Residual Mechanism for Criminal Tribunals or, finally, some other future authorized United Nations body.

34. The following facts support the initiative in question:

(a) The results achieved by the Republic of Serbia in the cooperation with the Tribunal. With the transfer of Ratko Mladić and Goran Hadzić to the Tribunal, Serbia completed the part of cooperation with the Tribunal related to the surrender of the accused. In regard to the provision of documents, access to the archives of the State and witnesses, cooperation between the Republic of Serbia and the Tribunal has been maintained on a very high level for quite a long time, which was confirmed in the regular reports of the Tribunal's officials to the Security Council in the last four years;

(b) The Republic of Serbia has achieved significant results before the national courts in the proceedings for grave breaches of international humanitarian law that happened during the armed conflicts at the territory of the former Yugoslavia. To date, 395 individuals suspected of involvement in war crimes on the territory of the former Yugoslavia have been processed;

(c) On 20 January 2011, the Republic of Serbia signed an agreement on the enforcement of sentences with the International Criminal Court, according to which individuals convicted for war crimes, crimes against humanity and genocide can serve their prison sentences in the prisons of the Republic of Serbia. It should be noted that the Republic of Serbia is the first State of South-East Europe to have signed an agreement of this kind with the International Criminal Court, and that the United Kingdom of Great Britain and Northern Ireland, Austria, Belgium, Denmark and Finland are the only States preceding Serbia in this act.

35. In addition, it should be emphasized that the President of the Tribunal, Judge Theodor Meron, has spoken on several occasions about the unwillingness of States to sign an agreement with the Tribunal on the enforcement of prison sentences, and of those that had already signed an agreement to accept new convicts. It is also very difficult to explain that Albania has signed this agreement while, for instance, Slovenia, a member of the European Union, was not allowed to do the same since it is a State established on the territory of the former Yugoslavia.

Review of the activities related to the initiative of the Republic of Serbia that citizens of Serbia, convicted before the Tribunal, be referred to Serbia for serving their prison sentences

36. In March 2009, the President of the National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia addressed the Secretary-General of the United Nations and the President and Registrar of the Tribunal on the subject of the initiative assumed by the Republic of Serbia for referring the citizens of the Republic of Serbia convicted before the Tribunal to serve their prison sentences in Serbia.

37. During the visit of Judge Robinson, at the time the President of the Tribunal, to the Republic of Serbia in July 2009, the issue of the enforcement of prison sentences was raised at all meetings the President had in Belgrade. Judge Robinson emphasized at the time that similar requests had been received from the Republic of Slovenia and the Republic of Croatia.

38. Following additional consultations with the legal department of the United Nations in September 2009, the President of the National Council for Cooperation with the Tribunal addressed the Under-Secretary-General for Legal Affairs and Legal Counsel on 5 November 2009 on the subject of this initiative. In the reply of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel of 16 December 2009 it was emphasized that the Secretary-General was generally of the opinion that the issue of the enforcement of the sentences in the region should be reviewed. In addition, it was stated that the Secretary-General had requested a complete evaluation of the Tribunal in regard to the possibility of the prison sentences being served in the countries established on the territory of the former Yugoslavia and that the Tribunal was preparing a report covering all of the States established on the territory of the former Yugoslavia. At the end of the letter it was suggested that the Security Council needed to be informed about that initiative, since the Security Council would have the final word in this matter.

39. Taking into consideration the aforementioned, the President of the National Council for Cooperation with the Tribunal, following the conclusion of the National Council, addressed the President of the Security Council on 19 January 2010. The aforementioned initiative was a subject of discussion at the meetings between the

Director of the Office of the National Council and representatives of the Office of Legal Affairs of the United Nations in December 2010 and June 2011.

40. Following these events, the President of the National Council, following the conclusion of the National Council, reiterated his address to the Secretary-General of the United Nations on 20 June 2011.

41. The Secretary-General did not reply to this letter. At the meeting with the assistant of the Secretary-General of the United Nations for legal affairs in December 2011, the Director of the Office of the National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia reiterated the importance of this initiative. The assistant for legal affairs replied that he was familiar with the position of the Republic of Serbia in regard to this issue, that he had full understanding of them and that this matter continued to remain dependent on the opinion of the officials of the Tribunal.

42. On 3 December 2012, the President of the National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia addressed once again the Secretary-General of the United Nations on this issue, as well as the President of the International Criminal Tribunal for the Former Yugoslavia.

43. It can be said that this issue has been on the agenda of almost all meetings held between the representatives of the National Council and the Office of the National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia and the representatives of the Tribunal.

V. Continuation of the Cooperation between the Republic of Serbia and the Tribunal

44. The Republic of Serbia supports the accomplishment of the full truth about the crimes that were perpetrated during the armed conflicts on the territory of the former Yugoslavia, which includes punishing those responsible for the crimes, regardless of their nationality and regardless of the nationality of the victims.

45. Because of the aforementioned, the judgment of the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia of 16 November 2012 acquitting Ante Gotovina and Mladen Markac of responsibility in relation to the crimes perpetuated against the Serbian civilian population during the Croatian forces' operation *Oluja*, together with the Trial Chamber's judgment of acquittal of 29 November 2012 following the retrial of the accused Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj, resulted in the resentment of the Republic of Serbia and motivated the decision of the Government of the Republic of Serbia to reduce future cooperation with the Tribunal to the technical level.

46. This judgment, which justifyingly incited very negative reactions on the part of both officials of the Republic of Serbia and international experts, caused great damage to, foremost, the families of the victims of the crimes that clearly had been perpetrated during the operation *Oluja*, and, consequently, to international justice and the efforts that were invested in reaching reconciliation among the people in the region of the Western Balkans.

47. It is important to emphasize several compelling facts and controversies related to this judgment. The judgment was rendered by three votes to two of the Appeals

Chamber judges, accompanied by the unusually fierce tone of the two judges who provided their dissenting opinions. In that manner, Judge Fausto Pocar, former President of the Tribunal and one of the judges giving a dissenting opinion, emphasized that this verdict "contradicts any sense of justice" and described it as "grotesque". It is also surprising that the majority of the judges of the Appeals Chamber of the Tribunal, which was established by the United Nations, have little confidence in generals and other officials of high rank coming from the United Nations Member States, who were in the field under the United Nations flag during the time of the events that were the subject of the Trial Chamber's decision and who gave their testimonies in relation to these events before the Trial Chamber. In addition, both the former and present Prosecutor of the Tribunal expressed their disappointment in relation to this judgment and emphasized that the verdict does not represent justice.

48. On the other hand, when we talk about the effects of this judgment, we have to emphasize that, considering the results of the Tribunal's practice, the Tribunal has not sentenced and will not sentence anyone for the crimes perpetuated against the civilian population in operation *Oluja*, regardless of the fact that the Tribunal had found in its judgments, with absolute certainty, that the crimes were committed during this time. It should be emphasized that this is not the first time that the Tribunal concludes in its practice that the crimes occurred, but that neither the indictees nor anyone else is found responsible of the crimes that were perpetrated.

49. The judgment of acquittal in the proceedings *Prosecutor v. Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj* that was rendered on the retrial based on the six counts of indictment for the crimes perpetrated in the so-called Kosovo Liberation Army camp in Jablanica in Kosovo and Metohija in 1998 has similar effects. These proceedings were accompanied from the very beginning by mistakes on the part of the Office of the Prosecutor and the acting Trial Chambers of the International Criminal Tribunal for the Former Yugoslavia (foremost the first acting Trial Chamber). This Trial Chamber allowed provisional release for Haradinaj and his engagement in political activities, which represents a unique case in the Tribunal, although at the time the Tribunal must have been aware of the fact that there was a problem in witness protection in relation to this case. The attitude of the representatives of the United Nations Interim Administration Mission in Kosovo (UNMIK) towards this case and the accused Haradinaj was very strange as well. In spite of the obvious problems, UNMIK offered guarantees for Haradinaj's provisional release, while the UNMIK chief at the time, Soren Jessen-Petersen, publicly described Haradinaj as his friend. Several potential witnesses in this case died under controversial circumstances, while several of the key witnesses, according to the estimate of the Office of the Prosecutor of the Tribunal, declined to testify before the Tribunal in fear for their personal safety.

50. We additionally have to emphasize the fact that when the results of the Tribunal's practice are summarized it becomes clear that for the hundreds of thousands of Serbian refugees and the thousands dead and wounded, the Tribunal sentenced a few guards from prison camp Celebici in Bosnia and two Kosovo Albanians who were, as well, direct perpetrators of lower rank. We emphasize that Serbia has never asked for simulated symmetry in relation to the Tribunal's indictments and judgments. However, exactly this result builds suspicion that justice in the Tribunal's proceedings has been selective, while it is clear that selective justice cannot be considered justice.

51. Regardless of all presented facts, the Republic of Serbia will not cease the cooperation with the Tribunal, but it will, however, reduce this process to the technical level. This actually means that Serbia will continue to process requests for assistance that are coming from the Office of the Prosecutor of the Tribunal and legal defence teams that are related to access to documentation, archives and witnesses. Nevertheless, subsequent to this judgment, Serbia will not participate in the organization of seminars, conferences, round tables and educational programmes about the importance of the Tribunal's activities and its contribution to processes of facing the past.

Belgrade, December 2012